IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19149 of 2005
With
SPECIAL CIVIL APPLICATION No. 19157 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LIMBABHAI TALSHIBHAI AND ANOTHER
Versus
STATE OF GUJARAT AND ANOTHER

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Appearance :
MR NV GANDHI for Petitioner.
MR LB DABHI, AGP for Respondent Nos.1-2.
NOTICE SERVED for Respondent No.2.
RULE SERVED for Respondent No.2.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 16/04/2007

COMMON ORAL JUDGMENT

1) Heard learned advocate Shri N.V.Gandhi for the petitioners and

learned AGP, Shri L.B.Dabhi for the respondents.

2) Since identical questions are involved in these petitions, they are heard together and are disposed of by this common judgment.

3) The petitioners are the original landholders whose lands were acquired by the respondents under the provisions of the Land Acquisition Act, 1894 (herein after referred to as “the said Act”).

3.1) The Land Acquisition Officer passed an award in favour of the petitioners with which the petitioners were not satisfied. They, therefore, sought references under the provisions of the said Act. Accordingly, references were made to the District Court. References of the petitioners came to be dismissed for default by the District Court on 3rd May, 1997. Neither the petitioners nor their advocate was present before the Court and, therefore, the references were dismissed for want of prosecution.

3.2) The petitioners filed Civil Misc.Application Nos.31/2004 and 30/2004 and prayed for setting aside the order dismissing the references for default. The petitioners had also prayed for condonation of delay in filing such applications.

3.3) To explain substantial delay caused in filing the applications, the petitioners had stated, inter alia, that after the references were dismissed on 3rd May 1997, their advocate had not informed the petitioners about the same. As soon as the petitioners came to know about the dismissal of the references they have filed applications seeking setting aside of the dismissal order as well as for condonation of delay.

3.4) Learned District Judge, however, was not convinced about the

reasons for condonation of delay pointed out by the petitioners, therefore, by two separate orders both dated 13th July 2005, he rejected the applications on the ground that the delay is not sufficiently explained.

3.5) The petitioners have, therefore, approached this Court by filing present petitions seeking to challenge the impugned orders both dated 13th July, 2005 passed by the District Court below Exh.1 in Civil Misc. Application Nos.31/2004 and 30/2004.

4) Learned advocate Shri N.V.Gandhi for the petitioners submitted that the District Court materially erred and committed an error of jurisdiction at the very outset while dismissing the references for default. He submitted that the District Court ought to have decided the references on merits even in absence of the petitioners, and, that the District Court had no power to dispose of the references by dismissing the same for default.

5) Reliance in this regard is placed on the decision of the Apex Court in case of **Khazan Singh (Dead) by Lrs Vs. Union of India** reported in **(2002) 2 SCC 242**.

6) It is further submitted that for the same acquisition other landholders whose lands were acquired simultaneously with that of the petitioners, the Reference Court had enhanced the compensation at the rate of additional Rs.2 per sq.mtr., as against the compensation granted by the Land Acquisition Officer at the rate of Rs.1 per sq.mtr. He submitted that even as per the analogy of the provisions contained in Section 28-A of the said Act, the petitioners were entitled to claim parity and receive compensation at similar rate.

6.1) Learned advocate Shri Gandhi, however, agreed that the petitioners had moved their applications for setting aside the orders of dismissal for default after a considerable period of time and, he suggested that the Court may, in order to balance the equities, modulate the entitlement of the petitioners to receive interest on the enhanced compensation for the period during which the proceedings remained dismissed.

7) On the other hand, learned AGP Shri L.B.Dabhi opposed the petitions and submitted that the Reference Court committed no error in rejecting the applications of the petitioners. He further submitted that even if the order passed by the Reference Court dismissing the references for default was illegal, the same had to be set aside for which appropriate application had to be filed by the petitioners within the permissible time limit or at best within reasonable time by explaining delay caused in filing such applications. He pointed out that such applications were grossly belated and the petitioners had sought setting aside of dismissal of references after nearly seven years.

7.1) Reliance was placed on the decision of the Apex Court in the case of **Ziniben widow of Bhanabhai Fakirbhai Vs. Union of India and Others** reported in **2003 (3) GLH 12**, in which Division Bench of this Court opined that provisions contained in Section 18 (2) of the said Act have been made to see that there is no undue burden on the public exchequer when the land is acquired for public purpose. On that ground limitation provided under said Section was held to be constitutional.

7.2) Reliance is also placed on the decision of the Apex Court in the case of **Addl. Special Land Acquisition Officer, Bangalor Vs.**

Thakoredas, Major and Others reported in **(1997) 11 SCC 412,** wherein the Apex Court held that on failure of Deputy Commissioner to make references to the Civil Court on an application of the landholder seeking such a reference, though no limitation is prescribed under the Act, for challenging such an order Article 137 of the Limitation Act would apply and that such an application must be made within three years from the date of expiry of 90 days prescribed in Section 18 (3) (b) of the said Act.

7.3) Reliance is also placed on the decision of the Apex Court in the case of **Mewa Ram (deceased by Lrs) and Others Vs. State of Haryana** reported in **AIR 1987 SC 45** in which the Apex Court was pleased to reject the Special Leave Application filed by the landholders seeking enhancement of compensation on the ground of delay observing that the claimant cannot plead their own laches as sufficient ground for condonation of delay.

8) Having heard the learned advocates appearing for the parties, I find that the contention of Shri Gandhi for the petitioners that the Reference Court had no power to dismiss the references for default is supported by the decision of the Apex Court in the case of **Khazan Singh** (Supra). In the said decision, the Apex Court held as under :

> "7. The provisions above subsumed would thus make it clear that the civil court has to pass an award in answer to the reference made by the Collector under Section 18 of the Act. If any party to whom notice has been served by the civil court did not participate in the inquiry it would only be at his risk because an award would be passed perhaps to the detriment of the party concerned. But non-participation of any party would not confer jurisdiction on the civil court to dismiss the reference for default."

8.1) It was, therefore, not open for the Reference Court to dismiss the references for default even in absence of the petitioners or their learned advocate. The petitioners, therefore, approached the Reference Court seeking to set aside the order by filing appropriate applications. Such applications were, however, dismissed by the impugned orders. It is true that there is considerable delay in filing such applications, however, such delay was sought to be explained by stating that the advocate of the petitioners neither remained present before the Court on the date of hearing, nor informed the petitioners about the dismissal of the references. Upon coming to know about such dismissal the petitioners approached the trial Court by filing application seeking setting aside of such orders. Additionally, I also find that for the same land acquisition proceedings, landholders of adjacent areas received enhanced compensation at the hands of the Reference Court. Section 28-A of the said Act has been added by the legislature to ensure parity in compensation in cases of land acquisition proceedings. In case of enhancement of compensation by the Reference Court in favour of some of the landholders by virtue of provisions contained in Section 28-A of the said Act, even other land owners similarly situated and involved in the same land acquisition proceedings have been given an opportunity to seek parity in compensation even though they may not have sought references earlier.

9) Combined effect of these factors present in these cases is that the petitioners deserve an opportunity to pursue their references on merits. In coming to such a conclusion, I am influenced by three factors noted herein above. Even at the cost of repetition, I find that these petitions deserve to be allowed since (i) the initial orders passed by the Reference Court were for dismissing the references for default, which legally the Reference Court could not have done, (ii) the petitioners filed

applications seeking setting aside of the dismissal of the references for default and explained the delay by stating that their advocate had not informed them about the result and (iii) landholders of adjacent areas whose lands were acquired simultaneously with that of the lands of the petitioners have succeeded in receiving higher compensation for their lands at the hands of the Reference Court.

10) In the Division Bench decision of this Court in the case of **Ziniben Vs. Union of India** (supra) this Court was considering the constitutionality of the provisions contained in sub-section 2 of Section 18 of the said Act providing period of limitation for seeking references. The observations made by the Division Bench in the said case, therefore, would not apply in facts of the present case.

11) In case of **Additional Special Land Acquisition Officer Vs. Thakoredas** (supra) the Apex Court was considering the period of limitation for filing application. In that case, the Deputy Commissioner failed to make reference to the Civil Court within prescribed period of 90 days from the date of receipt of an application seeking a reference made by the claimant landholder. It was in this background that the Apex Court found that there was no fixed period of limitation prescribed under the said Act. Provisions contained in Article 137 of the Act would apply and such application must be made within a period of three years from the date of expiry of 90 days prescribed in Section 18 (3) (b) of the said Act. Fact situation in the present case is widely different and the ratio laid down by the Apex Court in said case, therefore, would have no application.

12) In the case of Mewa Ram Vs. State of Haryana (supra) the Apex Court had rejected Special Leave Application on the ground of

unexplained delay. No ratio of universal applicability was laid down therein.

13) Though I am inclined to allow this petition, the same cannot be done unconditionally. The petitioners sought setting aside of the dismissal of the references for default after considerable delay. The said Act provides for interest at the rate of 9% p.a. for the first year and, thereafter at the rate of 15% p.a. for enhanced compensation. Thus if the petitioners succeed in the references and receive additional compensation for the lands lost by them through the process of compulsory acquisition, such enhanced compensation would carry statutory interest provided under the said Act. After a considerable period of time, when the petitioners did not pursue the remedy and during the time when references remained dismissed, it would not be equitable to allow interest on enhanced compensation even if the petitioners ultimately succeed fully or partially in their references.

14) In the result, therefore, even while allowing these petitions and setting aside the impugned orders both dated 13th July 2005 passed by the Reference Court in Civil Misc. Application Nos.31/2004 and 30/2004, it is provided that even if the petitioners ultimately succeed in receiving order for enhancement of compensation for the lands acquired, for the period, from the date of dismissal of the references, i.e., 3-5-1997 till the filing of the applications for restoration of such references, i.e., 13-7-2004, the petitioners shall receive no interest on the enhanced compensation, solatium thereon or 12% additional amount on such enhanced compensation for the said period.

15) In the result, subject to above rider, both these petitions are allowed. The references of the petitioners being Land Reference Cases

No.17/1993 and 18/1993 preferred before District Court, Surendranagar, are restored to file. Rule is made absolute to the above extent. No costs.

(Akil Kureshi, J.)

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